

AMENDED IN ASSEMBLY MARCH 25, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1957**

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**Introduced by Assembly Member Eng**

February 13, 2008

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An act to amend Sections 6452.1, 6453, 6487.3, and 18510 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

AB 1957, as amended, Eng. Qualified use tax payment.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller’s permit from, the State Board of Equalization, and requires that board to issue forms for the computation and payment of sales and use taxes collected or owed by those retailers. For taxable years beginning on January 1, 2003, and ending on December 31, 2009, existing law authorizes a person to make an irrevocable election to report qualified use tax, as defined, on that person’s income tax form. Existing law requires the Franchise Tax Board to include space on income tax returns to allow a person to report and remit qualified use taxes to the Franchise Tax Board, and requires the Franchise Tax Board to remit the qualified use taxes collected to the State Board of Equalization.

This bill would recast the provisions relating to use tax reporting on an income tax return to instead require every person subject to qualified use tax, as defined, to report and remit that tax on an acceptable tax return, as specified. This bill would require the Franchise Tax Board to revise the income tax form to enable a person to report and remit

qualified use tax. This bill would also make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6452.1 of the Revenue and Taxation  
2 Code is amended to read:

3 6452.1. (a) Notwithstanding Section 6451, every person that  
4 purchases tangible personal property, the storage, use, or other  
5 consumption of which is subject to qualified use tax, as defined  
6 in subdivision (d), that is otherwise required to report and remit  
7 that tax pursuant to this part and fails to do so, shall report and  
8 remit qualified use tax on an acceptable tax return.

9 (b) (1) In the case of a married individual filing a separate  
10 California personal income tax return, an election may be made  
11 to report either one-half of the qualified use tax or the entire  
12 qualified use tax on his or her separate California personal income  
13 tax return.

14 (2) If an individual elects to report one-half of the qualified use  
15 tax, that election will not be binding with respect to the remaining  
16 one-half of the qualified use tax owed by that individual and that  
17 individual's spouse.

18 (c) An acceptable tax return that contains use tax shall be  
19 considered a tax return for purposes of this part.

20 (d) For purposes of this section:

21 (1) "Acceptable tax return" means a timely filed original return  
22 that is filed pursuant to Article 1 (commencing with Section  
23 18501), Article 2 (commencing with Section 18601), Section  
24 18633, Section 18633.5 of Chapter 2 (commencing with Section  
25 18501) of Part 10.2, or Article 3 (commencing with Section 23771)  
26 of Chapter 4 of Part 11.

27 (2) (A) Except as provided in subparagraph (B), "qualified use  
28 tax" means ~~the~~ *either of the following*:

29 (i) *The* use tax imposed under this part, Section 35 of Article  
30 XIII of the California Constitution, the Bradley-Burns Uniform  
31 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
32 7200)), or the Transactions and Use Tax Law (Part 1.6  
33 (commencing with Section 7251)) that has not been paid to a

1 retailer holding a seller's permit or certificate of registration-use  
2 tax.

3 (ii) *For individual purchases of less than one thousand dollars*  
4 *(\$1,000), the estimated amount of use tax due based on the person's*  
5 *California taxable income as reflected in the use tax table shown*  
6 *in the accompanying instructions of the acceptable tax return. For*  
7 *individual purchases of one thousand dollars (\$1,000) or more,*  
8 *"qualified use tax" means the amount of use tax due in accordance*  
9 *with clause (i).*

10 (B) "Qualified use tax" does not include:

11 (i) Use tax that applies to a mobilehome or a commercial coach  
12 that is required to be registered annually pursuant to the Health  
13 and Safety Code or use tax that applies to a vehicle subject to  
14 identification under Division 16.5 (commencing with Section  
15 38000) of the Vehicle Code, or to a vehicle that qualifies under  
16 the permanent trailer identification plate program pursuant to  
17 subdivision (a) of Section 5014.1 of the Vehicle Code.

18 (ii) Use tax imposed on a vehicle, vessel, or aircraft.

19 (iii) Use tax imposed on a lessee of tangible personal property.

20 (iv) Use tax imposed on purchases of cigarettes, tobacco  
21 products, or cigarettes and tobacco products for which the  
22 purchaser is registered with the board as a cigarette consumer, a  
23 tobacco products consumer, or a cigarette and tobacco products  
24 consumer.

25 (e) A person that is required to report qualified use tax on an  
26 acceptable tax return shall report and remit the qualified use tax  
27 ~~due~~ *by either reporting the amount due based on all taxable*  
28 *purchases of tangible personal property made during the taxable*  
29 *year for which the taxable return is required to be filed or, with*  
30 *respect to individual purchases of less than one thousand dollars*  
31 *(\$1,000), by using the use tax table shown in the accompanying*  
32 *instructions of the acceptable tax return.*

33 (f) (1) The penalties and interest imposed under this part, the  
34 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
35 (commencing with Section 7200)), or the Transactions and Use  
36 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply  
37 to use tax reported as qualified use tax on an acceptable return.

38 (2) Any claims for refunds or credits of any use tax reported as  
39 qualified use tax on an acceptable tax return shall be made in

1 accordance with Chapter 7 (commencing with Section 6901) of  
2 this part.

3 (3) Qualified use tax shall be considered to be timely reported  
4 and remitted for purposes of this part, the Bradley-Burns Uniform  
5 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
6 7200)), and the Transactions and Use Tax Law (Part 1.6  
7 (commencing with Section 7251)), if the qualified use tax is timely  
8 reported on and remitted with an acceptable tax return in  
9 accordance with the provisions of this section.

10 (g) Notwithstanding a person's payment of qualified use tax on  
11 an acceptable tax return, the State Board of Equalization is not  
12 precluded from making any determinations for understatements  
13 of qualified use tax against that person in accordance with Part 5  
14 (commencing with Section 6451). *However, with respect to*  
15 *individual purchases of less than one thousand dollars (\$1,000),*  
16 *the board shall be precluded from making any such determination*  
17 *against any person that uses the use tax table for purposes of*  
18 *satisfying his or her use tax liability when the person uses that*  
19 *table in accordance with the accompanying instructions.*

20 (h) Any payments and credits shown on the return, together  
21 with any other credits associated with that person's account, of a  
22 person that is required to report qualified use tax on an acceptable  
23 tax return shall be applied in the following order:

24 (1) Taxes imposed under Part 10 (commencing with Section  
25 17001) or Part 11 (commencing with Section 23001), including  
26 penalties and interest, if any, imposed under Part 10.2 (commencing  
27 with Section 18041).

28 (2) Qualified use tax reported on the acceptable tax return in  
29 accordance with this section.

30 (i) (1) This section does not apply to a person who is otherwise  
31 required to hold a seller's permit or to register with the State Board  
32 of Equalization pursuant to Part 1 (commencing with Section 6001)  
33 of this division.

34 (2) This section applies to purchases of tangible personal  
35 property made on or after January 1, 2009, in taxable years  
36 beginning on or after January 1, 2009.

37 SEC. 2. Section 6453 of the Revenue and Taxation Code is  
38 amended to read:

39 6453. For purposes of the sales tax, the return shall show the  
40 gross receipts of the seller during the preceding reporting period

1 and, in the case of a person who is liable for the sales tax and is  
2 not a seller, the gross receipts of such person for the period in  
3 which the liability was incurred. For purposes of the use tax, in  
4 case of a return filed by a retailer, the return shall show the total  
5 sales price of the property sold by him or her, the storage, use, or  
6 consumption of which property became subject to the use tax  
7 during the preceding reporting period; in case of a return filed by  
8 a purchaser, except as provided in Section 6452.1, the return shall  
9 show the total sales price of the property purchased by him or her,  
10 the storage, use, or consumption of which became subject to the  
11 use tax during the preceding reporting period.

12 The return shall also show the amount of the taxes for the period  
13 covered by the return and any other information which the board  
14 deems necessary for the proper administration of this part.

15 SEC. 3. Section 6487.3 of the Revenue and Taxation Code is  
16 amended to read:

17 6487.3. (a) (1) For persons that are required to report qualified  
18 use tax in accordance with Section 6452.1, except in the case of  
19 fraud, intent to avoid this part or authorized rules and regulations  
20 issued by the board, or the gross understatement of qualified use  
21 taxes, every notice of a deficiency determination with respect to  
22 the qualified use tax shall be mailed within three years after the  
23 last day for which an acceptable tax return is due or filed,  
24 whichever occurs later.

25 (2) In the case of a gross understatement of qualified use tax,  
26 every notice of a deficiency determination with respect to the  
27 qualified use tax shall be mailed within six years after the last day  
28 for which an acceptable tax return is due or filed, whichever occurs  
29 later.

30 (3) For purposes of this subdivision a “gross understatement of  
31 qualified used tax” is a deficiency that is in excess of 25 percent  
32 of the amount of qualified use tax reported on a person’s acceptable  
33 tax return. In the case of married individuals filing separate  
34 California personal income tax returns, the total amount of qualified  
35 use tax reported will be considered in determining whether there  
36 is a gross understatement of qualified use tax.

37 (4) For purposes of this section “acceptable tax return” means  
38 a timely filed original return that is filed pursuant to Article 1  
39 (commencing with Section 18501), Article 2 (commencing with  
40 Section 18601), Section 18633, Section 18633.5 of Chapter 2

1 (commencing with Section 18501) of Part 10.2, or Article 3  
2 (commencing with Section 23771) of Chapter 4 of Part 11.

3 (b) This section applies to reporting of purchases of tangible  
4 personal property made on or after January 1, 2009, in taxable  
5 years beginning on or after January 1, 2009.

6 SEC. 4. Section 18510 of the Revenue and Taxation Code is  
7 amended to read:

8 18510. (a) (1) The Franchise Tax Board shall revise the returns  
9 required to be filed pursuant to this article, Article 2 (commencing  
10 with Section 18601), Section 18633, Section 18633.5, and Article  
11 3 (commencing with Section 23771) of Chapter 4 of Part 11 and  
12 the accompanying instructions for filing those returns in a form  
13 and manner approved by the State Board of Equalization, to enable  
14 a person to report and pay qualified use tax in accordance with the  
15 provisions of Section 6452.1.

16 (2) Within 10 working days of receiving from the Franchise  
17 Tax Board the returns and instructions described in paragraph (1),  
18 the State Board of Equalization shall do either of the following:

19 (A) Approve the form and manner of the returns and instructions  
20 and notify the Franchise Tax Board of this approval.

21 (B) Submit comments to the Franchise Tax Board regarding  
22 changes to the returns and instructions that shall be incorporated  
23 before the State Board of Equalization approves the form and  
24 manner of the returns and instructions.

25 (b) Any payments and credits shown on the return, together  
26 with any other credits associated with that person's account, of a  
27 person that reports qualified use tax on an acceptable tax return  
28 shall be applied in the following order:

29 (1) Taxes imposed under Part 10 (commencing with Section  
30 17001) or Part 11 (commencing with Section 23001), including  
31 penalties and interest, if any, imposed under this part.

32 (2) Qualified use tax as reported on the acceptable tax return,  
33 in accordance with Section 6452.1.

34 (c) The Franchise Tax Board shall transfer the qualified use tax  
35 received pursuant to Section 6452.1, and any information the State  
36 Board of Equalization deems necessary for its administration of  
37 the use tax, to the State Board of Equalization within 60 days from  
38 the date the use tax is received or the acceptable tax return is  
39 processed, whichever is later.

1     (d) This section shall be operative for returns filed for taxable  
2     years on and after January 1, 2009.

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